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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/029,832	12/27/2001	Jack E. Haken	US010712	5495
24737 7590 03/30/2010 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER PLUCINSKI, JAMISUE A				
ART UNIT 3629		PAPER NUMBER		
MAIL DATE 03/30/2010		DELIVERY MODE PAPER		

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS  
5 AND INTERFERENCES  
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8 *Ex parte* JACK E. HAKEN  
9

10  
11 Appeal 2009-009108  
12 Application 10/029,832  
13 Technology Center 3600  
14

15  
16 Decided: March 29, 2010  
17

18  
19 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and  
20 ANTON W. FETTING, *Administrative Patent Judges*.  
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL  
23

1 STATEMENT OF THE CASE

2 Jack E. Haken (Appellant) seeks review under 35 U.S.C. § 134 (2002) of  
3 a final rejection of claim 13, which along with claims 1-7, 10, and 14 whose  
4 rejections were withdrawn are the only claims pending in the application on  
5 appeal.

6 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)  
7 (2002).

8 SUMMARY OF DECISION<sup>1</sup>

9 We AFFIRM.

10 THE INVENTION

11 The Appellant invented a method and system that coordinates time and  
12 position information, including the geographic position of a wireless device  
13 which is used to place an order, with route and delivery system information  
14 to allow dynamic delivery of fast food, personal items or other goods and  
15 services to customers who are walking, driving, or traveling (Specification  
16 2:6-10).

17 An understanding of the invention can be derived from a reading of  
18 exemplary claim 13, which is reproduced below [bracketed matter and some  
19 paragraphing added].

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<sup>1</sup> Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed January 10, 2006) and the Examiner's Answer ("Ans.," mailed December 9, 2008), and Final Rejection ("Final Rej.," mailed December 7, 2005).

1           13. Electrical signals transmitted on a cellular wireless  
2           communication system that are modulated with information to  
3           implement the sending and receiving steps of claim 1.

4  
5                                           THE REJECTION<sup>2,3</sup>

6           Claim 13 stands rejected under 35 U.S.C. §101 as being directed towards  
7           non-statutory subject matter.

8                                           ISSUE

9           The issue of whether the Examiner erred in rejecting claim 13 under 35  
10          U.S.C. § 101 as being directed toward non-statutory subject matter turns on  
11          whether claim 13 recites a transitory propagating signal per se.

12                                       FACTS PERTINENT TO THE ISSUES

13          The following enumerated Findings of Fact (FF) are believed to be  
14          supported by a preponderance of the evidence.

15                   *Facts Related to Appellant's Disclosure*

16           01.   The specification describes that a customer uses a wireless data  
17                  terminal to place an order with a food company (Specification  
18                  8:16-17). The customer's terminal exchanges messages with a

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<sup>2</sup> The Examiner has withdrawn the previously asserted rejection of claims 1-8, 10, 11, 13, and 14 under 35 U.S.C. § 103(a) as unpatentable over Ohler and Kraisser (Ans. 3). The Examiner has also withdrawn the previously asserted rejection of claim 6 under 35 U.S.C. § 103(a) as unpatentable over Ohler, Kraisser, and O'Meara (Ans. 3).

<sup>3</sup> We note that the only remaining rejection is the rejection of claim 13 under 35 U.S.C. § 101 (Ans. 3).

server (Specification 8:17-20). The server queries its database  
determine whether the customer's request can be satisfied  
(Specification 9:4-5). The server further monitors the status of the  
order and the locations of the customer and a delivery person  
(Specification 11:6-8).

## PRINCIPLES OF LAW

### *Patentable Subject Matter*

Transitory embodiments are not directed to statutory subject matter.  
Examples include physical but transitory forms of signal transmission such  
as radio broadcasts, electrical signals through a wire, and light pulses  
through a fiber-optic cable, that convey encoded information. *In re Nuijten*,  
500 F.3d 1346, 1353-54 (Fed. Cir. 2007).

## ANALYSIS

*Claim 13 rejected under 35 U.S.C. §101 as being directed towards non-  
statutory subject matter*

The Examiner found that claim 13 recites an electrical signal that  
contains information and a signal by itself is non-statutory subject matter  
(Ans. 4). The Appellant contends that the recited data modulated signal can  
be perceived through the use of suitable circuitry such as a cellular telephone  
and therefore is statutory subject matter (App. Br. 8).

We disagree with the Appellant's argument. Claim 13 recites "electrical  
signals transmitted on a cellular wireless communication system." The  
specification is silent as to a specific definition for an electrical signals  
transmitted on a cellular wireless communication system. Under the

broadest reasonable construction claim these electrical signals are transitory propagating signals *per se*. A signal does not fit within at least one of the four statutory subject matter categories under 35 U.S.C. § 101. *In re Nuijten*, 500 F.3d at 1357. As such, the Appellant has not satisfied the burden of showing that the Examiner erred in rejecting claim 13 under 35 U.S.C. § 101.

#### CONCLUSIONS OF LAW

The Examiner did not err in rejecting claim 13 under 35 U.S.C. § 101 as being directed toward non-statutory subject matter.

#### DECISION

To summarize, our decision is as follows.

- The rejection of claim 13 under 35 U.S.C. § 101 as being directed toward non-statutory subject matter is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

#### AFFIRMED

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